IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

COMMERCIAL DIVISION

AT DAR ES SALAAM

MISC. COMMERCIAL CAUSE NO. 11695 OF 2025

IN THE MATTER OF THE COMPANIES ACT, CAP 212 OF 2002

AND

IN THE MATTER OF THE COMPANIES INSOLVENCY RULES, GN 43 OF 2005

AND

IN THE MATTER OF PETITION FOR WINDING UP OF MINOPEX TANZANIA LTD

RULING

March 2nd, 2026
April 10th, 2026

Morris, J

Corporate persons are legally born through incorporation and their existence principally ends by winding up. This ruling is in regard to the latter process. Through this application, Minopex Tanzania Limited has petitioned this Court to issue the winding up order; appoint a liquidator for such exercise; grant costs hereof; and sanction any other discretionary reliefs for him. The affidavit of Paul Thomson, one of the company's directors, verifies and supports the petition. Other credentials attached to and supporting the petition include copies of the petitioner's certificate of incorporation;

memorandum and articles of association (MEMARTS); current official search report; and special board resolution.

The material facts of this matter are briefly that: the petitioner was incorporated by two shareholders (Minerals Operations Executive (Pty) Ltd and DRA Minerals Projects (Pty) Ltd (currently, DRA Projects SA (Pty) Ltd] on September 8th, 2010. He was issued with the certificate of incorporation No. 78450. The petitioner's principal object was construction and management of mineral processing plants. Various grounds have been advanced for the winding up herein. That is, it was no longer commercially viable to continue with the petitioner's operations; he did not engage in profitable trading activities; he was unable to discharge his outstanding debts; and his inability to recover TZS 432,127,283.34 which he erroneously paid Tanzania Revenue Authority (TRA) in 2013.

After the filing of the petition herein, the Court ordered the petitioner to issue and/or publish the petition and statutory notices pursuant to Rules 99(1), 102 and 105 of ***the Companies* (*Insolvency Rules*)**, 2004; GN No. 43/2005 [***the Rules***]. The petitioner complied accordingly. However, no opposing credentials were lodged in this Court whatsoever. Consequently, the matter was set to progress to the next stage. For the hearing of this matter, the petitioner retained Advocate Evarist Mugishagwe Kameja. As hinted above, the petition stood unchallenged. Consequently, I granted leave to Mr. Kameja to present written submissions in lieu of oral hearing.

The petitioner's counsel prefaced the nature and gist of the petition and stated that the same was filed under sections 279(1) (a) and (d) together with 294 of ***the Companies Act,*** Cap 212 R.E. 2002 (***the Act***); and Rules 99 102 and 105 of ***the Rules***. He reiterated that, the petitioner opted for winding up due to averred and verified factors in the petition and the verifying affidavit thereof. He prayed to adopt both documents as part of his submissions. He also pointed out that, the petitioner complied with issuance and publication of the petition as required by the law. Likewise, that he served the petition upon the Business Registration and Licencing Agency (BRELA) and TRA on 28/8/2025 and 29/8/2025 respectively; but, only the latter (through Ms. Veronica Warioba) appeared in this Court on 15th September 2025 and supported the petition.

Furthermore, he projected two issues for determination in this matter: whether circumstances herein warrant the winding up of petitioner; and the

Court should appoint Claudio Msando to liquidate the petitioner. Submitting in regard to these issues, Mr. Kameja asserted that; the law cited in the petition was in favour of the prayed reliefs. He cited that, section 279 of ***the Act***, sets out the circumstances under which a company may be wound up by the court to include, if the company passed a special resolution in favour of the court-assisted winding up by the court; and when such company is unable to pay its debts. Further, he argued that ***the Rules*** referred to, provide for the mandatory procedures to be followed by the petitioner before both winding up and appointment of the liquidator are sustained by the Court under section 294 of ***the Act***.

The petitioner as well emphasised that, the grounds in the petition herein fell squarely within the purview of the law. Hereof, referred to ***Re winding up Smart Ventures Company Limited,*** Misc. Civ. Appl. No. 302 of 2023; ***Re Winding up of DRA Tanzania Limited***, Comm. Case No. 11694 of 2025; and ***Re winding up of Quality Labs Tanzania Limited***, Comm. Case No. 000011343 of 2025, to the effect that a duly-resolved decision by the company for its winding up on the reason of "lack of commercial viability" or "inability to pay its debts" may move the court to grant the petition.

Blending the foregoing authorities to the present matter, the petitioner argued that: the company herein passed the requisite resolution for winding up (**Annexure 4**); and advanced the grounds hereof under paragraph 8 of the petition with supporting financial statement to demonstrate his unprofitable existence and inability to meet his debts (**Annexure 3**). Similarly, he asserted that the Petition was unopposed by TRA. To him thus, the petition passed the test.

Regarding the liquidator hereof, the petitioner submitted that the company also resolved for and proposed Advocate Claudio Msando (Roll No. 8482) to be appointed for such position. And that, section 294 of ***the Act*** empowers the Court to appoint a suitable person to conduct liquidation of the company. In conclusion, the counsel argued that; basing on the premises of this matter and advanced reasons, the application was satisfactorily pursued. Hence, he prayed for the reliefs in the petition.

I have taken liberty to go through the annexures attached to the petition in order to establish the nexus between the grounds in the petition and the presented evidence. The said documents are mentioned in the first paragraph of this ruling. It is evident therefrom paragraph 8 of the petition that the petitioner is facing serious financial problems due to his inability to operate viable business for a considerable time. Consequently, he is at the verge of creating or has already created heavy financial and allied liabilities which are incapable of being remedied in the future. This averment notwithstanding, he did not produce the financial statement in this regard. Moreover, **annexure 4** does not specify the ground for which the winding up should be effectuated. However, from **annexure 3** (clause 8) the petitioner has not filed his annual returns with BRELA since 2017; which omission can rightly be inferred as his failure to operate in line with the law and objective for which he was incorporated.

According to section 282(1) of ***the Act***, a company may be wound up by the Court if it: officially resolves that it should be wound up by the court; fails to commence its business within a year from its incorporation or suspends its business for a whole year; has membership of below two people; is unable to pay its debts; or where the Court finds it just and equitable that the subject company should be wound up. The position of the petitioner's affairs as discussed above, falls squarely within the provisions of ***the Act***. Likewise, it has been established that this petition is un-opposed. To the contrary, TRA supports it.

In principle, after the petitioner satisfying the conditions under both ***the Act*** and ***the Rules***; and advancing sound grounds for winding up, the Court can legally allow his petition. Hereof, the Court relies on the cases of ***Pamela Essau Shayo v Unity School Ltd and 9 Others***, Civil Case No. 20 of 2017; ***Alizara Mohamed Rawji v CSS Solution,*** Misc. Civil Cause No. 353 of 2021; ***Shell Tanzania Limited v Scandinavian Express Services Limited***, Misc. Commercial Case No. 36 of 2005; ***Re Bazizane Company Limited***, Misc. Civ. Cause No. 224 of 2020; ***Re Sibatanza Limited***, Misc. Comm. Cause No.42/2022; ***Re Alfa Match Industries Limited***, Misc. Civ. Cause No. 292 of 2023; and ***Re Marlink Tanzania Limited***, Misc. Civ. Appl. No. 208 of 2023 (all unreported).

The above analysis having been made-and-done; the present application is found to meet the principal statutory conditions for this Court to exercise its powers in favour of the petitioner in so far as winding up order is concerned. The first issue is accordingly determined. That is, circumstances of this matter, warrants the Court to issue the winding up order in respect of the petitioner.

However, the foregoing does not take effect in isolation. The law requires that there must be appointed a person to liquidate the company being wound up. In the present application, the petitioner has also prayed for the Court to appoint such person under section 294 of ***the Act***. Due to revision of the laws of Tanzania in 2023, including ***the Act***, the relevant section is 297 thereof. Reading the latter provision, it is clear that the Court is mandated to appoint a liquidator or liquidators to perform the duties of winding up the company.

The foregoing powers notwithstanding, it has been a long-standing practice now that such person(s) is/are proposed to the Court by the petitioner and/or parties to the winding up proceedings. In my view, such approach is to give parties an opportunity of vetting the proposed person and to allow the court to be objective by appointing a person not of its own; where circumstances of the case do not warrant otherwise. That position is also in line with ***the Act***; ***Peter C. Pereira and Gerald P. Pereira v Isle***

of Germs, Misc. Civil Cause No. 16 of 2019 (unreported); and ***Re Alfa Match Industries Limited***(*supra*).

The philosophy behind the above system is not far to fetch. Among the effects of the winding up order, is that the company's officers to retain no power to anymore carry on the business of the company afterwards. The liquidator takes over control of the company forthwith. In the absence of such person, the liquidation process will not commence. That is, to order winding up of the company without appointing the liquidator is identical to the Court granting the probate or letters of administration without a corresponding executor/executrix; or administrator/administratrix of the deceased's estate.

In the matter at hand, the petitioner resolved and proposed the liquidator to be appointed by the Court. According to paragraph 10 and prayer (b) of the petition together with **annexure 4** thereto, the Petitioner prayed that Advocate Claudio Msando (Roll No.8482) be appointed to such position for a period of three (3) months. In more specific details in this regard, paragraph 2 of the petitioner's Board Resolution (annexure 4) provides that;

"And that, Advocate Claudio Msando of (sic) with Roll No. 8482 of Msando Law Chambers, Dar es salaam Tanzania, is hereby appointed (sic) as liquidator for winding up the company."

From the quotation above, Mr. Msando was officially proposed by the petitioner. Evidently, in the absence of any opposition against this matter, as explained above; the proposal for the liquidator equally stands uncontested. Henceforth, the second issue above is affirmed. For avoidance of doubt, I grant the prayer for winding up order in respect of Minopex Tanzania Limited (Certificate No. 178450); appoint Advocate Claudio Msando (Roll No. 8482) to liquidate the petitioner within 90 days of this ruling; and enter no order as to costs.

It is so ordered.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
COMMERCIAL DIVISION

C.K.K. Morris

Judge

April 10th, 2026